against the owner of the fee for unlawfully entering upon the property. *Barneycastle* v. *Walker,* 92 N. C. 198; *Marden* v. *Jordan,* 65 Me. 9. And a subsequent lessee has no better right to disturb the possession of the prior lessee than the lessor himself has. *Case* v. *Minot,* 158 Mass. 577, 33 N. E. 700, 22 L. R. A. 536; *Morgan* v. *Smith,* 5 Hun. (N. Y.) 220.

It is well settled that oil and natural gas are classed in law as minerals. *Lanyon Zinc Co.* v. *Freeman,* 68 Kan. 691, 75 Pac. 995, 1 Ann. Cas. 403; *Weaver* v. *Richards,* 156 Mich. 320, 120 N. W. 818; *People ex rel. Carrol* v. *Bell,* 237 Ill. 332, 86 N. E. 593, 15 Ann. Cas. 511, 19 L. R. A. (N. S.) 746. It is also held that the different strata underlying the same surface are capable of distinct ownership. See *Lillibridge* v. *Lackawanna Coal Co.,* 143 Pa. St. 293, 22 Atl. 1035, 24 Am. St. Rep. 544, 13 L. R. A. 627. Consequently, in a grant, or lease of mineral rights there is also passed by necessary implication a right to penetrate, and occupy that portion of the surface of the land necessary to gain access to the minerals. *Quando aliquid conceditur, conceditur etiam et id sine quo res ipso non esse putuit. Rowbotham* v. *Wilson,* 8 H. L. Cas. 348; *Turner* v. *Reynolds.* 23 Pa. St. 199; *Williams* v. *Gibson,* 84 Ala. 228, 4 South. 350. And where conflict arises in the exercise of their rights, between the owners of different strata, the owner of the lower strata has a right of access and egress through the upper. *Chartiers Block Coal Co.* v. *Mellon,* 152 Pa. St. 286, 25 Atl. 597, 34 Am. St. Rep. 645, 18 L. R. A. 702.

The instant case presents the situation of conflict between the rights of prior surface-lessee, and those of a later oil-lessee. The surface-lessee is entitled to the undisturbed and exclusive possession of the land; while the oil-lessee, in his turn, is entitled to the use of that portion of the surface necessary to carry on his mining operations. Viewing the situation strictly, it would seem that the lessor has attempted to do impliedly what he could not do expressly, namely: grant rights in the surface of the land, thus derogating from his grant to the surface-lessee. On the other hand, it can hardly be the policy of the law for an owner not to have access to his property.

A happy solution of this problem has been suggested by the promulgation of the doctrine that the several strata composing the earth's crust are, according to their order and arrangement, subject to reciprocal servitudes; that these servitudes are imposed by nature, and are indispensable to the proper enjoyment of each strata; and that they should, therefore, be recognized by the courts. See *Chartiers Block Coal Co.* v. *Mellon, supra.* This doctrine would seem to decide equitably a problem produced by modern mining conditions. It also has the support of text-writers. See LINDLEY, MINES, § 827.

STATUTE OF FRAUDS—PROMISE TO ANSWER FOR THE DEBT OF ANOTHER—ORIGINAL PROMISE.—The defendant made an oral promise to pay the debt which his brother owed the plaintiff, provided the latter would ship the defendant certain goods which he had ordered. The goods were shipped and received, but the defendant refused to fulfill his promise. *Held,* the defendant is liable. *Greenbaum* v. *Stern* (Wash.), 155 Pac. 751.

Where the primary object of a person who agrees to pay the debt of another is to gain some advantage, or promote some interest, or

purpose of his own; and not to become a mere guarantor or surety for another's debt, the promise is valid, although not in writing. *Fitzgerald* v. *Morrissey,* 14 Neb. 198, 15 N. W. 233; *Crawford* v. *Edison,* 45 Ohio St. 239, 13 N. E. 80; *Pizzi* v. *Nardello,* 209 Pa. 1, 57 Atl. 1100; *Miller* v. *Davis* (Ky.), 182 S. W. 839; *Gonzales* v. *Garcia* (Tex. Civ. App.), 179 S. W. 932. In such a case, the benefit which inures to the promisor is a new and sufficient consideration to support the promise. *Sinkovitz* v. *Applebaum,* 56 Misc. 527, 107 N. Y. Supp. 122. But, in order for a promise of this kind not to be within the statute of frauds, the resulting benefit to the promisor must be the consideraion which induced him to make the promise; and it is not sufficient if he be only incidentally benefitted thereby. *Clapp* v. *Webb,* 52 Wis. 638, 9 N. W. 796. Thus, where a mortgagee promised orally to see that the manager of the mortgagor's property was paid if he would remain in the mortgagor's employ, the manager never having threatened to leave, the contract was unenforceable. *West* v. *Grainger,* 46 Fla. 257, 35 South. 91.

It is held, by the weight of authority, that if the original debtor remains liable the promise is collateral and within the statute; but if there is an entire novation, a substitution of the promisor for the original debtor who is released, the promise is not to answer for the debt of another and, therefore, valid though oral. *Griffin* v. *Cunningham,* 183 Mass. 505, 67 N. E. 660; *Anderson* v. *Davis,* 9 Vt. 136, 31 Am. Dec. 612. But if the promisor receives some benefit from his promise, such as an assignment of property or a relinquishment of liens on property in which he has an interest, the rule that there must be an extinguishment of the original debt does not apply, for the benefit derived by the promisor is a sufficient consideration to support his promise. *Small* v. *Shaefer,* 24 Md. 143; *Luark* v. *Maloney,* 34 Ind. 44; *Weisel* v. *Spence,* 59 Wis. 301, 18 N. W. 165.

WORKMEN'S COMPENSATION ACT—CONSTRUCTION—"PERSONAL INJURY."—A workmen's compensation act provided for compensation for personal injuries arising out of and in the course of one's employment. A woman was disabled by the aggravation of a pre-existing heart disease caused by the muscular exertion required by her employment performed in its regular manner. *Held,* she is entitled to compensation under the act. *In re Madden* (Mass.), 111 N. E. 379. See NOTES, p. 625.